IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4494 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MAHESH MANSUKHBHAI SOLANKI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4494 of 2002

MR AR SHAIKH WITH MS BANNA DATTA for Petitioner No. 1

MR AY KOGJE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 25/06/2002

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner- detenu has challenged the legality and validity of the order of detention dated 7.11.2001 passed against him by the

Police Commissioner, Rajkot City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act). According to the detaining authority, it was satisfied that the petitioner is a "dangerous person" within the meaning of the provisions of the PASA Act and his activities are prejudicial to the "public order". The privilege under Section 9(2) of the PASA Act is also exercised in the present case.

2. On consideration of the grounds for detention, it is clear that total six offences were registered with one police station viz. Pradyumannagar Police Station of Rajkot City for the offences punishable under Sections 379 & 392 etc. of IPC on various dates between 18.10.2000 to 17.9.2001, i.e. within one year. It would be proper to give details thereof as under:-

Sr.No.	CR No. & Date	Police Station	IPC Section
1.	659/2000 18.10.2000	Pradyuman Nagar Police Station	392, 504
2.	516/2001 11.8.2001	-do-	379
3.	692/2001 22.10.2001	-do-	392, 188
4.	693/2001 22.10.2001	-do-	392, 188
5.	694/2001 22.10.2001	-do-	392, 504
6.	701/2001 25.10.2001	-do-	392

(i) It is also not a matter of dispute that the petitioner had applied for bail on 1.11.2001 and has been granted bail pending trial by competent Court in connection with all aforesaid offences. The detaining authority while recording the subjective satisfaction, has considered the submissions of two witnesses who have stated in detail the acts done qua them by the petitioner on 8.9.2001 and 27.7.2001 respectively. The gist of the statements of these two witnesses is reflected in the grounds of detention served on the detenu. Unregistered offences are also considered by the authority while passing the order of detention. These statements are verified by the authority before exercising privilege under Section 9(2) of the PASA Act.

3. Ld. counsel Ms. Banna Datta appearing for ld. counsel Mr. A.R.Shaikh for the petitioner has assailed the legality and validity of the order on number of grounds but has mainly argued on following grounds :-

(i) that the offences registered against the petitioner, even for the sake of arguments accepted, on set of facts as true, even then he cannot be branded as "dangerous person" and such offending activities cannot be said to be the activities prejudicial to the "public order". At the most, it can be said to be prejudicial to the "law & order " situation only. So, detaining authority ought not to have exercised the powers under Section 3(2) of the PASA Act;

(ii) that the documents supplied to the petitioner detenu were not fully legible and, therefore, quoting specific numbers of relevant pages, the petitioner was asked to furnish the legible copies from the office of the detaining authority. Number of pages which were found illegible by the detenu are reflected in the letter dated 12.4.2002 tendered today by the ld. counsel for the petitioner during the course of oral submissions. So, it is submitted that as per the settled legal proposition, it goes to the root rendering order of detention bad-in-law and hence order of detention requires to be quashed and set aside and petitioner be set at liberty forth with;

(iii) that the document Annex.E page 137 is in English. Mother tongue of the petitioner is Gujarati and he was not supplied with the translated copy of this document viz. order of State Government dated 15.12.2001 and hence the same has seriously prejudiced the right of the petitioner to make effective representation against the order of detention;

(iv) that the document Annexure : B on page 136 indicates that the order of detention has been approved and confirmed by the government on 16.11.2001. On that day, as per Calender and the affidavit filed by the State Government today, offices were closed as being a New Year Day. The date in the relevant document (i.e. page 136) looks apparently overwritten and the same has been done only with a view to see that the decision taken by the government falls within the

stipulated statutory period i.e. 12 days provided under Section 3(3) of PASA Act. It is vehemently submitted that on 16.11.2001, the responsible officer must not have approved the order of detention and if it was possible for him to give such approval, then on that very day, the State Government could have conveyed about this decision to the detenu. Indirectly, the ld. counsel has tried to submit that the order of approval and confirmation either is passed ante-date after 12 days mechanically or it must have been passed mechanically without proper application of mind.

(v) That on four different occasions, there is unreasonable delay caused which has not been explained by the State Government which affects adversely the continued detention of the petitioner.

(a) Firstly, delay has been caused in communicating the order of approval to the detenu. If the order of approval was passed on 16.11.2001, atleast on 18.11.2001 i.e. after Diwali Holidays and on reopening of government secretariate, the communication could have been sent to the detenu. The State has not cared to explain as to why the communication was not dispatched till 21.11.2001. It is submitted that it is a cyclostyled and prepared order and the relevant date was to be filled in only. So, it would not be correct to say that office took time in typing the letter of communication as stated in reply affidavit.

(b) Secondly, it is submitted that there is no explanation by the respondents as to the delay caused in communicating the decision of approval of the order because it was conveyed to the petitioner on 26.11.2001 though the letter was very well ready with the government on 21.11.2001.

(c) thirdly, in the same way, delay caused in dispatching the decision of the State Government to the detenu regarding rejection of the representation dated 5.4.2002 is also fatal. The decision of rejection of representation taken by the government dated 23.4.2002, could have been communicated to the detenu forthwith without any delay. Original communication received by the

detenu has been tendered by the ld. counsel appearing for the petitioner today during the course of oral submissions and it indicates that jail authorities had conveyed the decision taken by the State Government on 1.5.2002 and there is no explanation from the otherside as to why this delay between 23.4.2002 and 1.5.2002 has been caused.

(d) Lastly it is argued that there is delay in dispatching representation to the State Government by the detaining authority and delay in this connection for the period between 12.4.2002 to 19.4.2002 and both these delay has not been explained which renders the order and the detention illegal.

Unexplained delay on all these four occasions has affected adversely the validity and legality of the order of detention and, therefore, petitioner should be set at liberty by quashing and setting aside the order of detention passed against him.

(vi) That though Police Commissioner and Detaining Authority has become functus officio, authority has considered the representation and has tried to communicate to the detenu that certain legible pages are being supplied to him and his representation has been forwarded to the State Government and to the Secretary of the Advisory Board. This decision has been conveyed through incharge Police Inspector of City of Rajkot and the same was received by advocate of the petitioner Mr.A.R. Shaikh. Police Inspector has practically no authority to respond in reference to the representation made by the detenu.

(vii) The last point submitted by ld. counsel for the petitioner is that in view of Article 22(5) of the Constitution of India, the statement made by the Deputy Secretary in the affidavit that it is not compulsory or obligatory on the part of the State Government to convey the approval or confirmation of the order of detention, goes to the root of the validity of the order of detention and hence the same requires to be quashed and set aside.

4. In support of her submissions, ld. counsel Ms. Datta has placed reliance on some decisions of this Court

as well as of Apex Court;

(i) Decision in the case of Pushkar Mukherjee and Others v/s State of West Bengal, AIR 1970 SC 852, the Apex Court has observed that :-

" The contravention of any law always affects order, but it can be said to affect public order, it must affect the community or the public at large. In this connection a line of demarcation must be drawn between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals, and only in a secondary sense public interest.A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect the public order comes within the scope of the Act. A District Magistrate is therefore entitled to take action under Section 3(1) of the Act to prevent subversion of public order, but not in aid of maintenance of law and order under ordinary circumstances."

Referring to the decision in the case of Ram Manohar Lohia v/s State of Bihar, AIR 1966 SC 740, aforesaid observations have been made by the Apex Court. In the cited case, the conduct of the detenu was considered by the detaining authority and the Apex Court and the same is reflected in para-13 of the decision (Page 858). The authority found detenu Pushkar Mukharjee involved in commission of offences of riotous conduct, assault and criminal intimidation. Detaining authority has referred five such different incidents and other circumstances. First incident had occurred on 26.3.1967 where detenu was found in association with group of persons who had dragged the victim out of his room, assaulted him and friend of the detenu Harisikesh Samadder, caused injury on the person of the victim. Victim was asked to pay money. In the second, on 19.6.1967, he was found involved in assaulting the victim and ultimately was chargesheeted for the offences punishable under Sections 302, 394 of IPC. In the third incident, he was found tobe involved in giving threats to one Shri Sushil Kumar Chakraborty and he was also assaulted out of grudge when he was returning to his house. It was also on record that this detenu was

detained firstly for his rowdy activities under Section 30(1) of the Defence of India Rules, 1962 and was released in the year 1965. For the similar activities, he was again detained on 19.9.1966 under the preventive detention order and was released from detention on 13.3.1967. Advisory Board found that there was sufficient cause for detaining detenu Pushkar Mukharjee on 12.6.1968. The Apex Court while quashing the order of detention has observed that ground (ii) given for detention was extremely vague. It is apparent that this ground was advanced by the detaining authority on account of earlier two detention orders. So, detenu Pushkar Mukharjee was set at liberty on account of vagueness of the grounds found in the order of detention. The ratio propounded by the Apex Court in the above-cited decision is an accepted proposition of law, but on facts, it would not help the present petitioner because there is no such vagueness in the grounds mentioned in the order of detention passed against the present petition.

(ii) The second decision on which ld. counsel Ms. Datta has placed reliance is the decision in the case of Gulab Mehra v/s State of U.P.and Others, AIR 1987 SC 2332. In the cited case, the detention has been held bad mainly on two grounds; firstly that satisfaction recorded by the detaining authority was based on vague grounds and; (ii) the counter affidavit in response to the allegations made in the petition was filed by the police officer and not by the detaining authority. On facts also, the Court found that the detention is not legal. In para-11 of the decision, the Apex Court has observed;

" Detention order was made on the basis of the police report and a police complaint. The report does not disclose any particulars about the shopkeepers who have been terrorised and threatened for payment of money nor the names of any of the witnesses in whose presence the threat or terror was given and money was demanded are mentioned. The report is absolutely vague and it is not possible for the detenu to give an effective representation against the aforesaid ground which is one of the constitutional requirements enjoined in Article 22(5) of the Constitution....."

In the present case, detaining authority has placed reliance on sequence of offences of similar nature registered against the present petitioner within the same police station area whereby on two occasions, he was found responsible for violating notification- prohibiory

orders- issued by the statutory authority and, therefore, he has been chargesheeted for the offence punishable under Section 188 of IPC. Modus has been pointed out categorically by the detaining authority while conveying the grounds of detention and it has been further stated that he was found responsible for two other criminal wrong for which no offence is registered. So, in no way, it can be said that the grounds or the report by sponsoring authority is vague. So, on facts, the observations of the Apex Court in para-11 of the above-cited decision, would not help the present petitioner.

(iii) In the case of Ayya alias Ayub v/s State of U.P. and another, (1989)1 SCC 374, the Apex Court has held in paras-22 & 23 that:

"22. To lose sight of the real and clear distinction between the "public order" and "law and order" might lead, in the process of obliteration of their outlines, to the impermissible engrafting of the latter on the former.

23. In the present case, we are not, however, impressed with the submissions of Shri Garg that the detention was solely for the purpose of rendering nugatory the order of bail, the grant of which the detaining authority had then considered quite imminent. It is true that if the only ground or justification for the detention is the apprehension that the detenu was likely to be enlarged on bail, the detention might be rendered infirm. Shri Garg relied upon the following observations in Ramesh Yadav case (AIR p.316 : SCC P.234, SCC (Cri) P.516, para 6);

On a reading of the grounds, particularly the paragraph which we have extracted above, it is clear that the order of detention was passed as the detaining authority was apprehensive that in case the detenu was released on bail he would again carry on his criminal activities in the area. If the apprehension of the detaining authority was true, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised. Merely on the ground that an accused in detention as an undertrial

prisoner was likely to get bail an order of detention under the National Security Act should not ordinarily be passed.

But, where, as here, there are other grounds, the reference by the detaining authority to the prospects of grant of bail could be no more than an emphasis on the imminence of the recurrence of the offensive activities of the detenu. Even a single instance of activity tending to harm "public order" might, in the circumstances of its commission, reasonably supply justification for the satisfaction as to a legitimate apprehension of a future repetition of similar activity to the detriment of "public order". Likewise, without merit, is the contention as to the impermissibility of an order of detention being made against a person already in judicial custody. Even if a prosecution against a person fails or bail is granted an order of detention could be passed drawing the satisfaction therefor from the facts and circumstances involved in the criminal proceedings. An offender might secure an acquittal by intimidating witnesses. It all depends upon the circumstances of each case. But it is necessary for the detaining authority to resist the temptation to prefer and substitute, as a matter of course, the easy expedience of a preventive detention to the more cumbersome one of punitive detention. "

In the cited case, first two grounds were pertaining to commission of non-cognizable offence which had no rational nexus relating to maintenance of public order and this submission was accepted. As per third ground, detenu was found involved in serious offence and Sessions Court had enlarged the petitioner detenu on bail. It was specifically mentioned that serious attack was made which has spread tremor of fear in the neighbourhood and shopkeepers in the vicinity had pulled down their shutters. This is very important part of third ground which was not found supported by the documents. So, considering the element of vagueness, ultimately the Apex Court allowed the petition and quashed the order of detention. On the facts of the present case, therefore, the aforesaid decision would not help the petitioner. On the contrary, some observations in para-23 of the decision goes against the petitioner.

(iv) Next decision on which ld. counsel for the petitioner has placed reliance in the case of Smt.

Angoori Devi for Ram Ratan v/s Union of India & Others, (1989)1 SCC 385. Smt. Angoori Devi moved the Apex Court under Article 32 of the Constitution of India for Ram Ratan wherein order of detention was challenged and it was submitted that the problem does not touch the public order. While dealing with the petition, the Apex Court has discussed the various aspects and has decided what constitutes "public order". Detenu-police personnel- was arrested on the charge of committing congnizable offence under Section 392 R/w Section 34 of IPC with the assistance of some members from the public. After favourable order of bail during the pendency of investigation, the order under Section 3(2) of National Security Act was issued on the ground that commission of the heinous crime by police personnel themselves "created a sense of insecurity in the minds of public at large and is prejudicial to the maintenance of public order." Undisputedly, this was the solitary case registered against the concerned police personnel and discussion in para-10 of the decision is in reference to the facts of the case before the Apex Court. The Apex Court has observed that impact on the " public order" and "law & order" depends upon the nature of the act, applies where it is committed and motive force behind affecting the tempo of the life of the community. In the case on hand, detaining authority has felt satisfied that the detenu is in habit of committing similar types of offences against the property, even by violating the prohibitory directions issued by the State Authority. In all five cases, he must have applied for bail and has been granted bail in all the offences by the competent Court. Law as to bail in the field of criminal jurisprudence whether would be relevant in such type of cases is altogether a different issue which needs an independent consideration and the Courts have dealt with this point. But the apprehension expressed by the detaining authority in the grounds of detention wherein detaining authority has specifically mentioned that "you have been enlarged on bail and it may take very long time in getting bail cancelled." With a view to prevent the detenu from committing similar offences against the property and person, detaining authority on feeling satisfied that he is required to be detained as a preventive measure, the authority by applying mind in that direction can record its finding. This Court has to scrutinise the aspects considered by the detaining authority and if this Court is satisfied that subjective satisfaction has been arrived at objectively, then order of detention does not require to be disturbed. On the contrary, observations of the Apex Court in the case of Mohd. Dhana Ali Khan v/s State of West Bengal, 1975 SCC (Cri.) 695 and more

particularly in para-16, are found more relevant wherein the Apex Court has negatived the contention that a single incident referred to has not even casual connection with the disturbance of public order where railway passenger was looted and the order of detention was held valid. Thus, the ratio of the decision in the case of Smt. Angoori Devi (supra), on facts, would not help the present petitioner.

(vi) Ld. counsel Ms. Datta for the petitioner has placed reliance on the decision of the Apex Court in the case of Mrs. T.Devki v/s Government of Tamil Nadu & Others, reported in AIR 1990 SC 1086. In the said decision, order of detention was turned down by the Apex Court mostly on the vital facts reflected in paras 19 & 20 of the said decision. Detenu was the member of registered political party AIDMK and was active social and political worker. He was elected Member of the Tamil Nadu Legislative Assembly from Srivilliputhur Constituency in the General Elections held in 1977, 1980 and 1984. It was submitted that on account of the incident occurred in the presence of the Minister of Public Works Department sitting on the dias, when detaining authority namely the District Magistrate of Kamarajar district who was admittedly present in the Seminar, the order of detention came to be passed against the detenu. The Apex Court held that detaining authority must have relied on its own observations and knowledge instead of the report of sponsoring authority while reaching to the requisite satisfaction. In reference to this set of facts, the Apex Court observed that a solitary assault on one individual by the detenu can hardly be said to disturb public peace or place public order in jeopardy so much as to bring the case within the purview of the Act. The facts of the present case are totally different and no such extraneous consideration is peeping out and so this decision also would not help the petitioner at all.

(vi) Ld. counsel for the petitioner has also placed reliance on two Division Bench decisions of this Court wherein detenues involved in different theft cases have been set at liberty forthwith only on the ground that the activities of the detenues in both the cases cannot be said to be the activities prejudicial to the "public order" and detenu cannot be termed as dangerous person within the meaning of Section 2(c) of the PASA Act. I would like to refer relevant part of the decisions relied on by the ld. counsel for the petitioner.

(a) In Spl.Criminal Application No.

1681/1992 decided on 3.3.1993, Division Bench (Coram : A.P. Ravani & J.M. Panchal, JJ) has observed that in each case the Court has to see the length, magnitude and intensity of questionable activities of a person to find out whether his activities are prejudicial to the maintenance of "public order" or "law and order". In the cited case, detenu was involved in 19 different offences mostly punishable under Sections 379 & 380 of IPC. Out of these 19 cases, on five different occasions, he was also found involved in the offences punishable under section 457 and/or 454 of IPC. In most of the cases, he was found involved in taking away gas cylinders and gas regulators. On two occasions, he was found involved in lifting colour TV and video taperecorder etc. and on one occasion, he was found involved in taking away motorcycle. It is argued that the facts of the present case are mostly similar and it is submitted that nature of offence allegedly committed by the detenu may be relevant, but number of such offences by itself would not become relevant. In the present case, the detenu was found involved in six registered cases committed during the span of approximately one year in the same area i.e. in the area under Pradyumannagar Police Station. For all these offences, investigating agency has remained successful in getting muddamal at the instance of the accused and, therefore, it seems that on enlargement of the petitioner on bail in al these cases, with a view to prevent him from committing similar offences, detention order has been passed. The Court cannot ignore that arrest or detention of a habitual offender becomes a great solace to people of a particular area. To achieve such goal the authority may pass such orders of detention.

(b) In another Division Bench decision of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki v/s Police Commissioner, Surat & Ors., reported in 2000(1) GLH 393, this Court while dealing with the case of the person involved in theft cases, has quashed the order of detention holding that the activities of the detenu, cannot be said to be the activities affecting the public order.

6. Ld. AGP Mr. Kogje has placed reliance on the decision of this Court in the case of Premsing @ Pallu Jesing Rajput v/s State of Gujarat & Ors., reported in 1999(1) GLH 648. In para 3.3 of the decision, after referring the decision of Mustakmiya Jabbarmiya Shaikh v/s Commissioner of Police, reported in 1995(2) GLR 1208, this Court has held that :-

" The Detaining Authority from the material on record came to the conclusion that the petitioner is dangerous person within the meaning of S.2(c) of the PASA. This declaration does not require any interference because five offences were registered against the petitioner, four under S.379 IPC and one under Ss.392, 387 and 17 of the IPC. The repetition of offences punishable under Chapter XVII of IPC was thus indicated clearly from these five registered cases. In addition to this, the two confidential witnesses also narrated about commission of offences by the petitioner punishable under Chapters XVI & XVII of the IPC. In this view of the matter, the petitioner was rightly declared as dangerous person.

Coming to the activities of the petitioner, five registered cases cannot be said to have created situation prejudicial for maintenance of public order. The brief account of the offences committed on five occasions has been given in the grounds of detention and from this disclosure it cannot be said that the petitioner's activities were prejudicial for maintenance of public order. "

7. It is argued that ld. Single Judge while dealing with the case of Premsing Rajput (supra), was not assisted properly and the decision of the Division Bench of this Court in Spl.C.A. No. 1681/1992 should have been brought to the notice and had it been done, the finding recorded by the ld. Single Judge in Premsing Rajput's case (supra) could have been otherwise. The petitioner is found involved in the offences punishable under Chapter XVII of IPC. In the case of Premsing Rajput (Supra), this aspect has been considered from different angle and the subjective satisfaction recorded by the detaining authority has been evaluated in reference to the given set of facts. Premsing Rajput was involved in one case punishable under Section 392, 387 of IPC. While dealing with Spl.Civil Application No. 4413 of 2002 decided on 19.6.2002, this Court observed that the nature of offences made punishable under Chapter XVII of IPC should not be considered as same or similar type of offence against the property while appreciating, on facts, the subjective satisfaction recorded by the detaining authority under PASA Act. Chapter XVII of IPC itself has been sub-divided in three parts. First part relates to the offences against the property, second part relates to the offences against extortion and third part

relates to the robbery and decoity. Section 392 of IPC prescribes punishment for the offence of robbery and robbery is made punishable under section 392 of IPC, is to be viewed in reference to Section 390 of IPC which defines robbery. When the offence of theft is robbery, the gravity would be lessor than the case when extortion is found robbery. When a person is found involved in similar type of offence in the same area of the city and is found in the habit of committing offence inbetween particular hours of the day and has been enlarged on bail by the Court, then with a view to prevent him from committing similar types of offences and on account of some undisclosed offence, if the detaining authority records a finding that he is required to be detained being "dangerous person" in relation to his activities as a habitual thief or robberer, than it would be difficult for this Court to conclude that the subjective satisfaction recorded by the detaining authority is bad in law or in any way violative of Article 22(5) of the Constitution of India. So, all the arguments advanced on this count are not found acceptable. In the above-cited decision of this Court in Spl.Criminal Application No. 1681/1992, the detenu was not involved in any offence which can be said to be robbery or extortion made punishable under Section 387 of IPC. On the contrary, observations made by the Division Bench referring to the decision of the Apex Court in the case of Harpreet Kaur v/s State of Maharashtra, reported in AIR 1992 SC 979, wherein the Apex Court has said that length, magnitude and density of the questionable activities of the person should be considered, would help the other side.

8. The third point argued by the ld. counsel is that the petitioner was not supplied with translated copy of the document Annex.E, would not help the petitioner on two counts; viz (i) it is not the case of the petitioner in the petition itself that Supdt. of Prison or any responsible officer of the Prison has not cared to explain the document served on him in detail. It is also not stated by the detenu on oath, as the petition is not supported by affidavit, that he does not know English and it was not possible for him to read and understand the document Annex.E. In absence of affidavit, this contention cannot be upheld. On the contrary, when detenu himself has signed Vakalatnama of his counsel which is in English, the Court can legitimately infer that he must be able to understand the document which he signs or he puts his signature after knowing the contents threof. The decision of the Apex Court in the case of Gurdev Singh v/s Union of India & others, reported in 2001 AIR SCW 4598, deals with mostly similar point

raised, and in para-19 of the judgment, the Apex Court has observed that in in absence of any material to show that the detenu had sought the help of the authorities to get the document in question translated into the language known to him, this point cannot help the detenu. In the present case also, it is neither submitted nor pleaded that after service of the document Annex.E page 137, the detenu has ever tried to get the same translated or requested the authority to supply the translated version of the said document. On the contrary, three inferences can legitimately be drawn, viz. (i) that this point raised is an after-thought, (ii) detenu wants to take advantage of his own inaction, and (iii) though he knows English, he pretends only with a view to get advantage of some decisions in this field of law.

9. It is argued that the petitioner detenu was not supplied with the legible copies of the documents considered by the detaining authority while recording subjective satisfaction for passing the order of detention which has seriously prejudiced the detenu's right to make effective representation. According to the petitioner, page nos. 31, 33, 45, 46, 73, 74, 75, 87, 88, 89, 107, 108, 109, 125 and 127 when served to the petitioner, were not legible and on demand legible copies of aforesaid documents were supplied to him. On query, ld. counsel appearing for the petitioner has fairly submitted that copies which were served first, are produced before the Court and so the Court has an opportunity to appreciate the correctness of the statement made and the point agitated. As observed by this Court in the case of Kalidas Chandubhai Kahar v/s State of Gujarat & Ors., 1993(2) GLR 1659, whether a document is legible one or not is a question of fact and should be examined by the Court itself. The Court has to consider the nature of illegibility and evaluate the effect thereof on the right of the detenu to make effective representation in the context of importance in formation of subjective satisfaction for detention. The Court is able to narrate the type of documents which were found illegible by the detenu, but it is not necessary to go into that exercise. However, on careful look and reading of all these documents, it transpires that this ground taken by the detenu is totally false and if some impressions of court-fees stamps affixed on the bail bonds in some of the papers found not that much clear, it cannot be said that the documents are illegible. On making efforts, the value of court fees stamps affixed on the documents is also ascertainable. Rubber stamp of the Court of ld. Chief Judicial Magistrate, Rajkot does not give clear impression and has blanks in some of the

documents, namely the bail papers produced, but in that each document, very rubber stamp is found legible and it shows designation of the Judge before whom bail applications were made or bail bonds were executed. It would not be proper to say or submit that some very vital or material documents supplied to the detenu were not legible. So, this contention of the detenu is also not found acceptable. These documents are also found very formal and not vital.

10. The next point which has been enlarged by ld. counsel is that on 16.11.2001, the day on which competent officer namely Secretary has granted approval to the order of detention passed by the detaining authority, it was a public holiday. Ld. AGP Mr. Kogje has tendered original file for perusal of this Court. Merely because Deputy Secretary has stated in his affidavit that on 16th, 17th & 18th November 2001 there were public holidays in the government department, it would not be proper to jump to an inference that approval must not have been granted on 16th November 2001. Many responsible officers in each department are working on non-working days or even during night hours with a view to comply with the statutory requirements and/or to do justice to the cause. If file is sent to such concerned officer or if the same is taken by him for proper compliance, then it was not impossible for the Secretary concerned to pass the order approving the order of detention. It cannot be argued that concerned Secretary ought to have filed affidavit that he had passed order on 16th November, 2001 though it was a public holiday. On perusal of the original file of the concerned department and the earlier noting dated 13.11.2001, this Court is satisfied that the approval was granted by the Secretary concerned on 16th November,2001. Overwriting in the document Annex.B page 135 does not go adverse to the root of the correctness of the date mentioned in the order. It seems that anticipating the order of approval, on 14th November, 2001 itself, the order must have been prepared by the concerned clerk or officer, but as the formal orders were passed on 16th November, 2001, the date 14th has been corrected as 16th November, 2001. If anything wrong was to be done by the government machinery, then there was nobody to prevent the concerned Secretary in putting the date 14th instead of 16th November, 2001. So, without going into any further surmises or conjectures, if the documents are considered as it is, the Court is not able to accept the say of the petitioner that the order of the approval has not been passed on 16.11.2001 and this date is put only with a view to see that statutory requirements are complied with. In

absence of specific allegations against the Secretary that he has passed ante-dated order of approval, it would not be proper to accept that Secretary himself should file affidavit in this regard, or absence of such affidavit would be fatal.

11. To appreciate the submissions on fifth point i.e. delay caused at four different stages, ld. counsel Ms. Datta for the petitioner has assailed the validity of the continued detention of the detenu on this point. It would be proper to state some details as to the proceedings of the subsequent stages. The order of detention has been passed on 7.11.2001 and on the same day, it was executed and detenu was supplied with the grounds of detention. Till 5.4.2002, no formal representation was made before the detaining authority or before any other authority. The order of detention has been approved by the State Government on 16.11.2001 i.e. within 12 days from the date of order as per the statutory requirements. Communication as to approval of the order of detention has been made to the detenu on 26.11.2001. Delay in dispatching this communication is caused by the concerned officer of the Home Department, has been explained by the State in the reply affidavit. Undisputedly, offices were closed till 18.11.2001. It is argued that delay caused between 18.11.2001 and 21.11.2001 has not been explained by the officer concerned reasonably. Secretariat normally would not take time of three days in typing a short order of 3 to 4 lines and in reality the order was practically ready and this could have been dispatched on 19.11.2001 itslef. However, the Communication has been dispatched on 21.11.2002. Ld. counsel appearing for the petitioner has placed reliance on three different decisions in reference to this plea taken by the detenu. Ratio of the first cited decision in the case of State of Punjab v/s Sukhpal Singh, reported in AIR 1990 SC 231 is that delay caused in communicating decision to the detenu is fatal. On the very ground, ld.counsel for the petitioner has placed reliance on the decision of this Court (Coram: A.L. Dave, J) in Spl. Civil Application No.9934/2001 decided on 17.1.2002. In the cited decision, communication dated 19.10.2001 regarding rejection of the representation was served to the detenu after 10 days i.e. 29th October, 2001. In absence of any formal representation made by the petitioner against the order of detention, delay of 2 or 3 days in dispatching the intimation as to approval of the order of detention cannot be termed as inordinate delay or in any way prejudicial to the petitioner. It is submitted by ld. AGP Mr. Kogje that such communications are not sent

personally, but are sent by post. Considering the intervening holiday viz. 25.11.2001 Sunday, the time taken by the jail authorities and time spent in reaching the post to the concerned prison also would not affect the validity of the detention order and it would not be proper to say that this delay has not been explained reasonably or properly.

(i) Another part of delay as pointed out by ld. counsel for the petitioner is between 23.4.2002 and 1.5.2002. Communication of rejection of representation was conveyed to the detenu on 1.5.2002 though decision was taken on 23.4.2002. In reference to the allegations made in para 5.22 of the petition that there is delay in disposal and communication of rejection of the representation, respondent State has tried to explain its position in para-10 of the reply affidavit filed by the Under Secretary (Law & Order), Department of Home Affairs, wherein he has explained that how the representation had reached the government and has been dealt with, but the affidavit is silent as to why the order of rejection of the representation was not conveyed on the very day i.e. on 23.4.2002. It is averred in the affidavit that after due consideration, representation was rejected on 23.4.2002 and accordingly, it was communicated to the detenu through jail authorities vide letter dated 23.4.2002. It is submitted by ld. AGP Mr. Kogje that relevant date is the date reflected in the original letter communicated to the detenu through jail authority. According to him, these communications are sent by post. The petitioner was detained in Central Jail, Sabarmati, Ahmedabad. I agree that on 25.4.2002, there was a public holiday on account of Mahavir Jayanti and month of April is of 30 days. There may not be any formal delivery of the post on 28.4.2002 being Sunday. So, looking to the totality of facts, time taken by postal authorities and time taken in handing over and conveying the decision of the State taken on 23.4.2002, in my view, the delay is not fatal and would not vitiate the order of detention. In the month of February, March & April 2002, Gujarat State machinery was also looking after the aspects of communal riots. Home Department especially and public machinery had become slugish to some extent. The Court while exercising powers under Article 226 of the Constitution cannot ignore this very well-known aspects. The letter dated 12.4.2002 written by incharge Police Inspector, Rajkot City (Crime Branch) is a communication to the detenu in compliance with the order passed by the Commissioner of Police i.e. detaining authority. Though Commissioner of Police had become functus officio on approval of the order of

detention by the State Government and after confirmation of the order of detention on the opinion expressed by the Advisory Board constituted under Section 10 of the PASA Act, but the letter dated 12.4.2002 is the response to the demand made by the detenu and detenu has been simply informed at the instance of the detaining authority that original representation received by the detaining auhority has been sent to the State Government and copy of the same has been sent to the Secretary, Advisory Board. One line in the letter also indicates that legible copies are supplied to the detenu as directed by the detaining authority. Letter dated 12.4.2002 is the letter written in response to one letter received by the detaining authority dated 5.4.2002, written by the advocate of the detenu/applicant. This letter itself has reached to the office of the Police Commissioner on 11.4.2002 and on the next day, the letter was responded. The date on which representation was made by the detenu is also 5.4.2002 and was dispatched on that very day.Copy of the representation is on record at page 138 which indicates that an attempt was made by the detenu for revocation of the detention order before the State Government. Detaining authority was requested to send the representation to the State Government for necessary action and the same was also forwarded as desired by the ld. counsel. Ld. counsel who had dispatched the representation to the Police Commissioner, must have been instructed by the detenu that the order of detention has been approved by the government and he has received the communication to that effect and the government has also confirmed the order of detention considering the opinion of the Advisory Board in the month of December 2001. The authority had become functus officio much prior to the date of representation made by the detenu through the ld. counsel. This correspondence between the office of the Police Commissioner and the ld. counsel has neither prejudiced the right of the detenu to make effective representation to the State Government nor has affected the legality and validity of the order passed by the detaining authority.

(ii) The next point canvassed on delay is that representation dated 12.4.2002 was received by the Home Department on 19.4.2002 at Gandhinagar. There is no clear affidavit by the detaining authority that representation was sent to the government on the very same day i.e. on 12.4.2002. Detaining authority is silent on this point in the affidavit filed today. The period between 12.4.2002 to 19.4.2002 is the period gap of 7 days, but while considering the period of such delay, date of dispatch of the representation by

detaining authority and date of receipt of representation by government shall have to be ignored. In view of the intervening holiday i.e. Sunday on 14.4.2002, delay between 15.4.2002 and 18.4.2002 i.e. of 4 days, cannot be said to be inordinate delay and for no fault on the part of the Home Department, representation might have reached on 19.4.2002 to the Home Department. So, this argument advanced by ld. counsel Ms.Datta for the petitioner would not help the petitioner.

12. One of the grievance of the ld. counsel appearing for the petitioner Ms. Datta is that ignoring the constitutional guarantee enshrined in Article 22(5) of the Constitution of India, the State authority has dared to state on oath that it is not compulsory on the part of the authority to communicate the decision of approval as well as of confirmation of the order of detention. This fact is stated in response to the contention raised by the petitioner in the petition. The fact remains that the petitioner was communicated about the order of approval as well as confirmation of the order of detention. This is not the case where the State has tried to justify non-communication of both these orders/decisions or any of it. So, though this Court is in agreement with the say of ld. counsel for the petitioner that above-referred part of the statement made in the affidavit by the officer concerned is not in accordance with right enshrined under Article 22(5) of the Constitution of India, but as both the orders/ decisions have been communicated, merely on such statement, the order of detention passed by the competent authority after proper application of mind, cannot be turned down.

13. No other points except the points raised and discussed above, are raised by ld. counsel appearing for the parties.

14. For the reasons aforesaid, this Court is not inclined to exercise jurisdiction vested in it under Article 226 of the Constitution of India in favour of the petitioner by turning down the order of detention. Hence, petition fails and requires to be dismissed.

15. In the result, petition is dismissed. Impugned order of detention dated 7.11.2001 passed by the Police Commissioner, Rajkot City, is held to be legal and valid. For raising false grounds regarding non-receipt of legible documents, this Court could have awarded costs to the State, but as the petitioner is under detention, no formal order as to costs is passed. Rule is discharged.

25-6-2002 [C. K.BUCH, J]
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